

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

AMCO INSURANCE COMPANY,)
)
Plaintiff,)
)
v.) No. 4:17-CV-00712-DGK
)
N.O., et al.,)
)
Defendants.)

**ORDER GRANTING IN PART AND DENYING WITHOUT PREJUDICE IN PART
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This declaratory judgment action concerns insurance coverage for a wrongful death lawsuit currently pending in the Circuit Court of Clay County, Missouri (“Underlying Lawsuit”).¹ The lawsuit stems from a workplace accident that caused the death of Colton Frisbee (“Decedent”). In that lawsuit, N.O., Decedent’s daughter, Corey Frisbee, Decedent’s father, and Leeann Hutchinson, Decedent’s mother (collectively “Underlying Claimants”), sued Terry Fletcher (“Fletcher”), Genie Industries, Inc., and Myron Cowley (“Cowley”) for the wrongful death of Colton Frisbee. At the time of the accident, Decedent and Fletcher worked for Myron’s Precise Paint Systems, Inc. (“Myron’s”), owned by Cowley.

Plaintiff AMCO Insurance Company (“AMCO”), Myron’s insurer, filed suit in this Court seeking a declaration that it has no duty to defend or indemnify Cowley in the Underlying Lawsuit. AMCO names as defendants N.O., Frisbee, Hutchinson, Fletcher, Genie Industries, Inc.,² and Cowley.

¹ *N.O. v. Genie Indus., Inc.*, No. 15CY-CV07590-01 (Mo. Clay Cty. Ct. filed Feb. 10, 2016).

² AMCO voluntarily dismissed Defendant Genie Industries, Inc. from this case (Doc. 5).

Now before the Court is AMCO's motion for summary judgment (Doc. 2), Underlying Claimant's Opposition (Doc. 27), Defendant Cowley's Opposition (Doc. 29), and AMCO's Replies (Docs. 30 & 31). AMCO moves for an order declaring it owes no duty to defend or indemnify Cowley based on the provisions of four insurance policies it issued to Myron's.

Defendant Cowley and Underlying Claimants agree the Auto policy does not provide coverage. Accordingly, Plaintiff's motion is GRANTED as to the Auto policy.

As to the other three insurance policies, the parties dispute whether Crowley was an insured based on his role at Myron's. While the parties were briefing the current motion, the Underlying Claimants amended their Petition in the Underlying Lawsuit clarifying their allegations regarding Cowley's position at Myron's. AMCO stated in their reply brief, they intended to file an "updated summary judgment motion to address the new allegations" contained in the Second Amended Petition. (Doc. 30 at 1). Because AMCO intends to refile its motion based on the allegations in the amended Petition, the Court DENIES WITHOUT PREJUDICE the remainder of AMCO's motion for summary judgment.

IT IS SO ORDERED.

Date: December 14, 2017

/s/ Greg Kays
GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT